# RED FLAG LAWS AND UTAH PROTECTIVE ORDERS

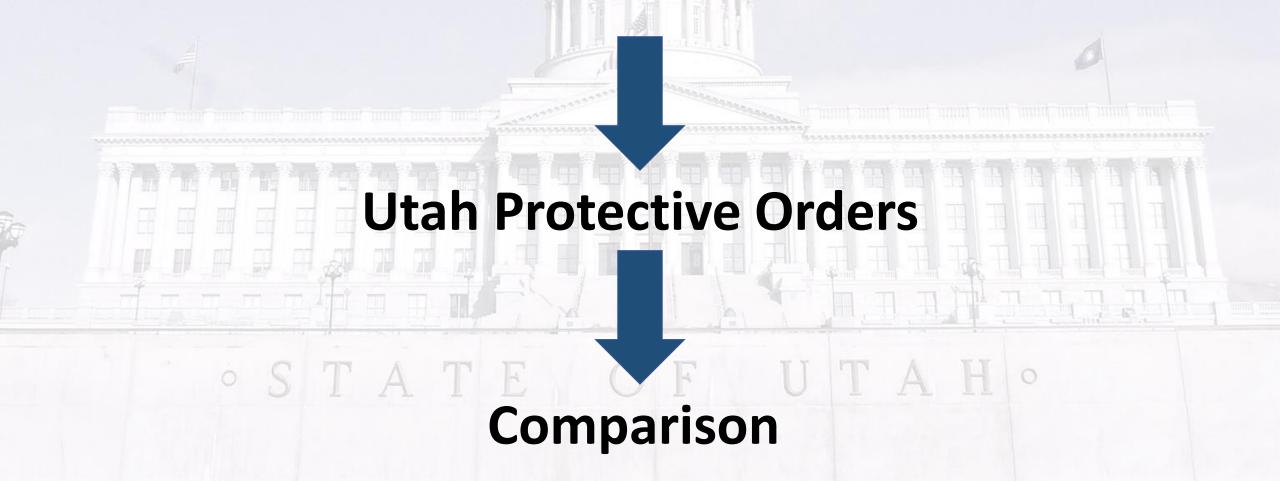
## AN OVERVIEW

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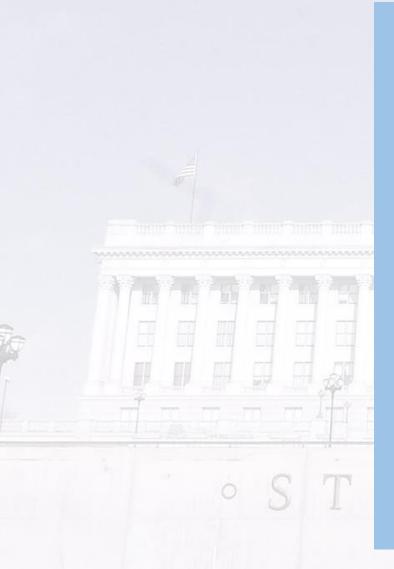
Presented to the Law Enforcement and Criminal Justice Interim Committee June 20, 2018



# **Extreme Risk Protective Order/ Gun Violence Restraining Order**



# RED FLAG LAWS INTRODUCTION



**Types** 

What States Have Them

Who Can Petition

**Notice Requirements** 

**Duration** 



## What are "Red Flag" Laws?

## Different Names for (Pretty Much) the Same Thing:

- **Extreme Risk Protective Order (ERPO)**
- **Gun Violence Restraining Order (GVRO)**
- Etc. o S T A T E O F U T A H o

#### **CURRENT EXTREME RISK PROTECTIVE ORDER LAWS**

#### **States with ERPOs or Similar Legislation**

#### **States with Pending ERPO Legislation**

California
Connecticut
Delaware
Florida
Indiana

Maryland
Oregon
Rhode Island
Vermont
Washington

Illinois Massachusetts Michigan New Jersey New York

North Carolina Ohio Pennsylvania

#### **States with Failed ERPO Legislation**

Alabama Alaska Arizona

Colorado

Hawaii

lowa Kansas Kentucky Louisiana

Maine

Minnesota

Missouri

Tennessee

Utah

- Law enforcement
- Spouse
- Family members
- Other cohabitants
- Mental Health provider
- Attorney General
- District Attorney
- Anyone eligible to file for a protective order

OSTATE OF UTAHO

## RED FLAG LAWS EXTREME RISK PROTECTIVE ORDERS: TYPES

## **Ex Parte** or Temporary ERPO

Issued without notice to respondent

### "Permanent" ERPO

 Issued after a hearing and notice to respondent (generally after the ex parte or temporary ERPO is served) Required notice varies by state

#### **EXTREME RISK PROTECTIVE ORDERS: BURDEN OF PROOF**

## **Initial or Preliminary Order**

- Reasonable Grounds
- Immediate Danger
- Reasonable Cause
- Probable Cause

## Hearing

- Clear And Convincing
- Preponderance Of The Evidence

STATE OF UTAHO

#### **EXTREME RISK PROTECTIVE ORDERS: DURATION**

## **Ex Parte** or Temporary ERPO

- 1 to 3 weeks
- Preserves status quo until noticed hearing

#### "Permanent" ERPO

- 6 months to 1 year
- Potential option to petition for extension/termination before expiration

## **Service Of Temporary/Permanent Order**

 Firearms Delivered To Local Law Enforcement

Or

Firearms delivered to Federal Firearms Dealer for sale/disposal

## Return Of Firearms Upon Expiration "Without Delay"

## **RED FLAG LAWS** Utah Protective Orders



## **RED FLAG LAWS** Utah Protective Orders



## INTRODUCTION

## **Utah Protective Orders**

**Types** 

Who Can Petition

**Notice Requirements** 

Burden of Proof

**Duration** 





## RED FLAG LAWS UTAH PROTECTIVE ORDERS: TYPES

## **Criminal Protective Orders**

- Jail Release Agreement or Jail Release Court Order
- **Pretrial Protective Order**
- Sentencing Protective Order
- **Continuous Protective Order**

## **Civil Protective Orders**

- **Protective Order -- Cohabitants**
- Child Protective Order
- **Dating Protective Order**

## **Stalking Injunctions**

- Civil
- Criminal

#### **UTAH PROTECTIVE ORDERS: FIREARM IMPACT**

## **Protective Orders that may Impact Firearm Possession**

Sentencing Protective Order

**Continuous Protective Order** 

**Cohabitant Protective Order** 

Child Protective Order

**Dating Protective Order** 

### **UTAH PROTECTIVE ORDERS: WHO CAN PETITION?**

#### **Cohabitant Protective Order**

Alleged victim against a cohabitant

#### **Child Protective Order**

Any interested person after first making a referral to the Division of Child and Family Services

#### **Dating Protective Order**

Alleged victim against a dating partner

STATE OF UTAHO

#### **UTAH PROTECTIVE ORDERS: BURDEN OF PROOF**

**Cohabitant Protective Order** Domestic violence or abuse has occurred or there is a "substantial likelihood" domestic violence or abuse will occur

#### **Child Protective Order**

A child is being abused or is in "imminent danger" of being abused

#### **Dating Protective Order**

A person has been subjected to or there is a "substantial likelihood" the person will be subjected to dating violence or abuse by a dating partner

## RED FLAG LAWS UTAH PROTECTIVE ORDERS: DURATION

Ex parte or temporary protective orders last until a hearing is held to determine whether a "permanent" protective order is necessary

A hearing for a "permanent" protective order must be set no later than 20 days after the ex parte order is made.

#### "Permanent" Protective Orders

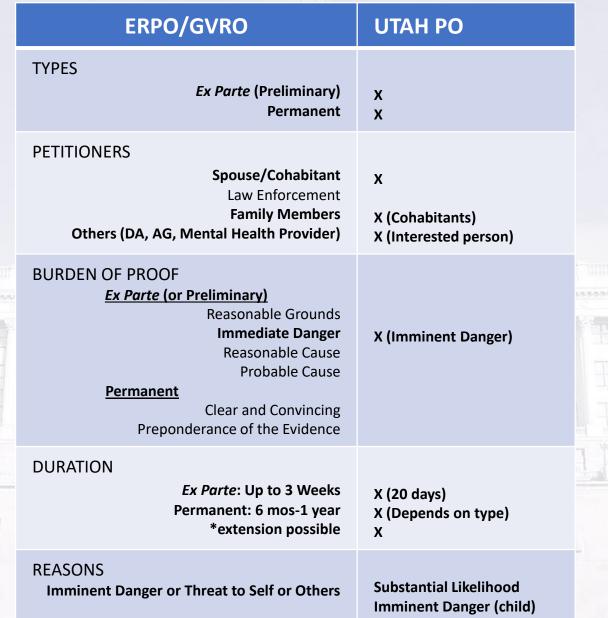
**Cohabitant Protective Order:** 150 days, review hearing after 2 years; automatic expiration after 10 years.

Child Protective Order: 150 days, unless a different date set by the court; automatic expiration when the child reaches age 18.

**Dating Protective Order**: 180 days.

A protective order may be extended if the court finds the protective order is still necessary after expiration

#### COMPARING ERPO AND UTAH PROTECTIVE ORDERS





## RED FLAG LAWS OTHER QUESTIONS AND CONSIDERATIONS

## Preventing Abuse Of The Process

## Storage

#### **Notice**

- **Protective Order Database**
- Bureau of Criminal Identification / NICS

Non-Firearm Owner

RED FLAG LAWS QUESTIONS

